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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MONADNOCK CONSTRUCTION, INC.,

Case No. \_\_\_\_\_

Plaintiff,

- against -

NOTICE OF REMOVAL OF  
ACTION UNDER 28 U.S.C. § 1441  
(DIVERSITY)

WESCHESTER FIRE INSURANCE COMPANY,

(Removed from Supreme Court,  
Kings County – Index #: 515499/15)

Defendant.

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TO: **THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT  
COURT FOR THE EASTERN DISTRICT OF NEW YORK**

**PLEASE TAKE NOTICE** that Defendant, Westchester Fire Insurance Company (“Defendant” or “Westchester”), hereby removes the action titled *Monadnock Construction, Inc. v. Westchester Fire Insurance Company*, filed in the Supreme Court of the State of New York, Kings County, Index No. 515499/2015. Removal is warranted under 28 U.S.C. § 1441 because this action involves claims over which this Court has original jurisdiction under 28 U.S.C. § 1332.

As the basis and support for such removal, Defendant respectfully avers as follows:

1. On or about December 22, 2015, Plaintiff, Monadnock Construction, Inc. (“Plaintiff” or “Monadnock”) filed a Summons with Notice captioned *Monadnock Construction, Inc. v. Westchester Fire Insurance Company*, Index No. 515499/2015, in the Supreme Court of

New York for Kings County (the “Summons With Notice”). A true and correct copy of the Summons with Notice is attached hereto as Exhibit “A”.

2. No further proceedings have been had in the New York Supreme Court.

3. On December 28, 2015, Plaintiff’s counsel caused a copy of the Summons with Notice to be served on the New York State Department of Financial Services. On January 4, 2016, Defendant was served when it received a copy of the summons with notice by substituted service at 436 Walnut St., Philadelphia, PA 19106.

4. This Notice of Removal is timely because it is filed within thirty (30) days of Defendant’s receipt or service of the Summons with Notice. See 28 U.S.C. § 1446(b)(1).

5. This Court has original jurisdiction pursuant to 28 U.S.C. §1332 because this is a civil action between citizens of different states and the amount in controversy exceeds \$75,000.

6. Plaintiff Monadnock Construction, Inc. is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York.

7. Defendant Westchester Fire Insurance Company is a corporation organized and existing under the laws of the State of Pennsylvania with its principal place of business in Pennsylvania.

8. Further, removal pursuant to 28 U.S.C. § 1332 is proper because the amount in controversy in the Summons with Notice exceeds the jurisdictional threshold for removal.

9. The amount in controversy in the above-entitled action, exclusive of interest and costs, exceeds \$75,000.00, as plaintiff demands in excess of \$9,000,000.00.

10. This Court has original jurisdiction of the above-entitled action pursuant to 28 U.S.C. §1332(a) due to diversity of citizenship. This action is, therefore, removable pursuant to 28 U.S.C. § 1441(a) and (b) because it is a civil action in which the amount in controversy exceeds the sum of \$75,000 and because complete diversity exists between Plaintiff and Defendant.

11. The above-entitled action is a civil action for breach of contract concerning payment and performance bonds issued by defendant in connection with a housing project in Long Island City.

12. Since defendant is not a resident of the State of New York wherein the above-entitled action is pending, removal of the action to this Court is proper pursuant to 28 U.S.C. §1441(a).

13. By this Notice of Removal, Defendant does not waive any defenses, including but not limited to any defenses pursuant to Rule 12 of the Federal Rules of Civil Procedure, and hereby expressly reserves the right to assert any such defenses in this action.

14. This Court is the United States District Court for the district encompassing the venue of the state court action being removed.

15. All pleadings filed in the state court action are included in Exhibit "A" attached hereto. These documents consist of the Summons with Notice, and constitute all process and pleadings in the state court action to date.

16. Notice to all parties and the Clerk of the Supreme Court of the State of New York for Kings County will be served and filed pursuant to 28 U.S.C. § 1446(d).

17. This notice is filed with this Court within thirty (30) days after the alleged service on the removing party of the summons with notice in the above-entitled action.

WHEREFORE, all procedural requirements for removal have been satisfied and this action is hereby removed to the United States District Court for the Eastern District of New York, based upon diversity jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1441.

DATED: NEW YORK, NEW YORK  
January 26, 2016

COZEN O'CONNOR

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